

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MORDECHAI SAMET,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	
BOP REG. DIRECTOR SCOTT DODRILL, et al.,	:	
	:	
Defendants.	:	

RONALD L. ELLIS, United States Magistrate Judge:

I. INTRODUCTION

Pro se plaintiff, Mordechai Samet (“Samet”), filed suit on October 17, 2005, against the Regional Director of the Bureau of Prisons, Scott Dodrill, Warden Frederick Menifee, Corrections Officer C. Robbins, and Unit Manager G. Tomaino (collectively, “defendants”), raising civil rights claims under 42 U.S.C. § 1983. Pending before the Court is Samet’s application for appointment of counsel. For the reasons set forth below, the application is **DENIED** without prejudice.

II. FACTS

Samet alleges that defendants violated his First Amendment rights by disciplining him for praying in the prison law library. Complaint under the Civil Rights Act (“Compl.”) at 5. He also claims he was not praying, but studying, which does not violate the prison regulations. Id. at 2, 4. He alleges a number of violations of due process throughout the disciplinary process, claiming that he did not receive an impartial hearing and was denied the right to call witnesses. Id. at 5. In his Application for the Court to Request Counsel (“AOC Request”), Samet asks for a lawyer to be appointed because his case presents “a complex legal matter” and his “legal knowledge is

not enough to represent [him]self in court.” AOC Request ¶ 2.

III. DISCUSSION

In making the determination of whether to appoint counsel for an indigent civil litigant under 28 U.S.C. § 1915(e), the court “exercises substantial discretion, subject to the requirement that it be guided by sound legal principle.” Cooper v. A. Sargent Co., 877 F.2d 170, 171-72 (2d Cir. 1989) (*citing Jenkins v. Chemical Bank*, 721 F.2d 876, 879 (2d Cir. 1983)). The court must first ask whether plaintiff can afford to obtain counsel. *See Terminate Control Corp. v. Horowitz*, 28 F.3d 1335, 1341 (2d Cir. 1994). If the court finds that a plaintiff cannot afford counsel, it must then examine the merits of the case and determine whether the indigent's position “seems likely to be of substance.” Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986). Once the initial determinations have been made as to indigence and merit, the court has discretion to consider the following factors: (1) the indigent's ability to investigate the crucial facts; (2) whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder; (3) the indigent's ability to present the case, (4) the complexity of the legal issues and (5) any special reason in that case why appointment of counsel would be more likely to lead to a just determination. Id. at 60-61.

Samet satisfies the threshold requirements insofar as his *in forma pauperis* status establishes his inability to afford counsel. Similarly, his claims appear to be “of substance.” Id. at 62. Prisoners have a constitutional right to religious practice, but this right is not absolute. *See Balabin v. Scully*, 606 F. Supp. 176, 179-80 (S.D.N.Y. 1985) (denying motion to dismiss where plaintiff had alleged that he was denied access to religious items for over one year). Inmates' specific requests to practice must be balanced against the impact of the accommodation

on the prison system as well as any alternatives provided. Withrow v. Bartlett, 15 F. Supp. 2d 292, 295-96 (W.D.N.Y. 1998) (*citing* Young v. Coughlin, 866 F.2d 567, 570 (2d Cir.), *cert. denied*, 492 U.S. 909 (1989); Benjamin v. Coughlin, 905 F.2d 571, 574 (2d Cir.), *cert. denied*, 498 U.S. 951 (1990); Salahuddin v. Coughlin, 993 F.2d 306, 308-09 (2d Cir. 1993)). In Withrow, the Court found that a prisoner's first amendment rights were not violated by a regulation restricting group demonstrative prayer in the prison yard. Id. at 298. However, the Court specifically distinguished facts quite similar to those presented here: "it must be remembered that [plaintiff] was disciplined not for praying silently to himself nor even for engaging in solitary demonstrative prayer, but for engaging in group prayer in the prison recreation yard, a place not authorized for such religious activity." Id. at 295. The facts Samet outlined in his complaint may very well state a case of a constitutional violation.

In considering the additional Hodge factors, however, it appears the appointment of counsel is unnecessary. The facts in the case are relatively clear and agreed upon by both parties, as is evident in the copies of Samet's grievances and the resulting responses he received from prison officials. *See* Compl., Exhs. 1, 2, 6-17. As such, the case will not likely involve an assessment of credibility or conflicting evidence, which would implicate the need for cross-examination and weigh towards appointment of counsel. *See* Hodge, 802 F.2d at 61 (*citing* Maclin v. Freake, 650 F.2d 885, 887 (7th Cir. 1981)). Samet's incarceration obviously presents an obstacle for his prosecution of the case. However, his complaint articulates a clear and concise statement of the facts, demonstrating his ability to present his case. *See* Compl. at 2-5. With his complaint, Samet included affidavits from witnesses, a list of the evidence he plans to use, and additional proof about the grievances he filed, demonstrating his ability to investigate

the facts. *See id.*, Exhs. 1-17. These additional submissions indicate that Samet is aware of the elements of his claims, the proof needed to make his case, and the administrative requirements he is required to fulfill. Furthermore, Samet's claims do not appear so complex that he cannot be afforded a just determination without legal representation. After review of the plaintiff's application in light of the aforementioned principles, the court finds that the appointment of counsel is not warranted in this case.

Samet's motion for appointment of counsel is **DENIED** without prejudice.

SO ORDERED this 3rd day of February 2006
New York, New York



The Honorable Ronald L. Ellis
United States Magistrate Judge